

House Amendment 1150

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1 1 Amend House File 712 as follows:
1 2 #1. By striking everything after the enacting
1 3 clause and inserting the following:
1 4 <Section 1. NEW SECTION. 714H.1 TITLE.
1 5 This chapter shall be known and may be cited as the
1 6 "Private Right of Action for Consumer Frauds Act".
1 7 Sec. 2. NEW SECTION. 714H.2 DEFINITIONS.
1 8 1. "Advertisement" means the same as defined in
1 9 section 714.16.
1 10 2. "Consumer" means a natural person or the
1 11 person's legal representative.
1 12 3. "Consumer merchandise" means merchandise
1 13 offered for sale or lease, or sold or leased,
1 14 primarily for personal, family, or household purposes.
1 15 4. "Deception" means an act or practice that is
1 16 likely to mislead a substantial number of consumers as
1 17 to a material fact or facts.
1 18 5. "Merchandise" means the same as defined in
1 19 section 714.16 except that, for the purposes of this
1 20 chapter, "merchandise" does not include services
1 21 offered or provided by any of the following persons,
1 22 including business entities organized under Title XII
1 23 by those persons and the officers, directors,
1 24 employees, and agents of those persons or business
1 25 entities, pursuant to a profession or business for
1 26 which they are licensed or registered:
1 27 a. Insurance companies subject to Title XIII.
1 28 b. Attorneys licensed to practice law in this
1 29 state.
1 30 c. Financial institutions which includes any bank
1 31 incorporated under the provisions of any state or
1 32 federal law, any savings and loan association or
1 33 savings bank incorporated under the provisions of any
1 34 state or federal law, any credit union organized under
1 35 the provisions of any state or federal law, any
1 36 affiliate or subsidiary of a bank, savings and loan
1 37 association, savings bank, or credit union, and
1 38 industrial loan licensees pursuant to chapter 536A and
1 39 regulated loan licensees pursuant to chapter 536.
1 40 d. Persons or facilities licensed, certified, or
1 41 registered under chapter 135B, 135C, 135J, 148, 148A,
1 42 148B, 148C, 149, 151, 152, 152A, 152B, 153, 154, 154B,
1 43 154C, 154D, 155A, 156, 169, 522B, 542, 542B, 543B,
1 44 544A, or 544B.
1 45 6. "Person" means the same as defined in section
1 46 714.16.
1 47 7. "Sale" means any sale or offer for sale of
1 48 consumer merchandise for cash or credit.
1 49 8. "Unfair practice" means the same as defined in
1 50 section 714.16.
2 1 Sec. 3. NEW SECTION. 714H.3 PROHIBITED PRACTICES
2 2 AND ACTS.
2 3 1. A person shall not engage in a practice the
2 4 person knows or reasonably should know is an unfair
2 5 practice, deception, fraud, false pretense, OR false
2 6 promise, or the misrepresentation, concealment,
2 7 suppression, or omission of a material fact, with the
2 8 intent that others rely upon the unfair practice,
2 9 deception, fraud, false pretense, false promise,
2 10 misrepresentation, concealment, suppression, or
2 11 omission in connection with the advertisement, sale,
2 12 or lease of consumer merchandise, or the solicitation
2 13 of contributions for charitable purposes. For the
2 14 purposes of this chapter, a claimant alleging fraud,
2 15 false promise, false pretense, or misrepresentation
2 16 must prove that the prohibited practice related to a
2 17 material fact or facts. "Solicitation of
2 18 contributions for charitable purposes" does not
2 19 include solicitations made on behalf of a political
2 20 organization as defined in section 13C.1,
2 21 solicitations made on behalf of a religious
2 22 organization as defined in section 13C.1,
2 23 solicitations made on behalf of a state, regionally,
2 24 or nationally accredited college or university, or

2 25 solicitations made on behalf of a nonprofit foundation
2 26 benefiting a state, regionally, or nationally
2 27 accredited college or university subject to section
2 28 509(a)(1) or 509(a)(3) of the Internal Revenue Code of
2 29 1986.

2 30 2. A person shall not engage in any practice or
2 31 act that is in violation of any of the following:

2 32 a. Section 321.69.
2 33 b. Chapter 516D.
2 34 c. Section 516E.5, 516E.9, or 516E.10.
2 35 d. Chapter 555A.
2 36 e. Section 714.16, subsection 2, paragraphs "b"
2 37 through "n".
2 38 f. Chapter 714A.

2 39 Sec. 4. NEW SECTION. 714H.4 EXCLUSIONS.

2 40 1. This chapter shall not apply to any of the
2 41 following:

2 42 a. Advertising by a retailer for a product, other
2 43 than a drug or other product claiming to have a
2 44 health-related benefit or use, if the advertising is
2 45 prepared by a supplier, unless the retailer
2 46 participated in the preparation of the advertisement
2 47 or knew or should have known that the advertisement
2 48 was deceptive, false, or misleading.

2 49 b. In connection with an advertisement that
2 50 violates this chapter, the newspaper, magazine,
3 1 publication, or other print media in which the
3 2 advertisement appears, or the radio station,
3 3 television station, or other electronic media which
3 4 disseminates the advertisement.

3 5 c. Any advertisement that complies with the
3 6 statutes, rules, and regulations of the federal trade
3 7 commission.

3 8 d. Public utilities as defined in section 476.1
3 9 that furnish gas by a piped distribution system or
3 10 electricity to the public for compensation.

3 11 e. The provision of cable television service or
3 12 video service pursuant to a franchise under section
3 13 364.2 or 477A.2.

3 14 f. The provision of local exchange carrier
3 15 telephone service pursuant to a certificate issued
3 16 under section 476.29.

3 17 g. Conduct for which a cause of action is
3 18 available to the consumer based upon negligence,
3 19 product liability, or warranty.

3 20 h. Actions alleging bodily injury.

3 21 i. Conduct in compliance with the orders or rules
3 22 of, or a statute administered by, a federal, state, or
3 23 local governmental agency.

3 24 j. An affirmative act that violates this chapter
3 25 but is specifically required by other applicable law,
3 26 to the extent that the action could not reasonably
3 27 avoid a violation of this chapter.

3 28 k. In any action relating to a charitable
3 29 solicitation, an individual who has engaged in the
3 30 charitable solicitation as an unpaid, uncompensated
3 31 volunteer solicitor and who does not receive monetary
3 32 gain of any sort from engaging in the solicitation.

3 33 2. "Material fact" as used in this chapter does
3 34 not include repairs of damage to or adjustments on or
3 35 replacements of parts with new parts of otherwise new
3 36 merchandise if the repairs, adjustments, or
3 37 replacements are made to achieve compliance with
3 38 factory specifications and are made before sale of the
3 39 merchandise at retail and the actual cost of any labor
3 40 and parts charged to or performed by a retailer for
3 41 any such repairs, adjustments, and parts does not
3 42 exceed three hundred dollars or ten percent of the
3 43 actual cost to a retailer including freight of the
3 44 merchandise, whichever is less, providing that the
3 45 seller posts in a conspicuous place notice that
3 46 repairs, adjustments, or replacements will be
3 47 disclosed upon request. The exclusion provided in
3 48 this subsection does not apply to the concealment,
3 49 suppression, or omission of a material fact if the
3 50 purchaser requests disclosure of any repair,
4 1 adjustment, or replacement.

4 2 Sec. 5. NEW SECTION. 714H.5 PRIVATE CAUSE OF
4 3 ACTION.

4 4 1. A consumer who reasonably relies on a practice
4 5 prohibited by this chapter and who suffers an

4 6 ascertainable loss of money or property as the result
4 7 of such prohibited practice may bring an action at law
4 8 to recover actual economic damages. An award of
4 9 damages for such a prohibited practice shall not be
4 10 made without proof that the consumer suffered actual
4 11 economic damages. The court may order such equitable
4 12 relief as it deems necessary to protect the public
4 13 from further violations, including temporary and
4 14 permanent injunctive relief.

4 15 2. If the court finds that a person has violated
4 16 this chapter and the consumer is awarded actual
4 17 damages, the court shall award to the consumer the
4 18 costs of the action and to the consumer's attorney
4 19 reasonable fees. Reasonable attorney fees shall be
4 20 determined by the value of the time reasonably
4 21 expended by the attorney including but not limited to
4 22 consideration of the following factors:

4 23 a. The time and labor required.
4 24 b. The novelty and difficulty of the issues in the
4 25 case.
4 26 c. The skills required to perform the legal
4 27 services properly.
4 28 d. The preclusion of other employment by the
4 29 attorney due to the attorney's acceptance of the case.
4 30 e. The customary fee.
4 31 f. Whether the fee is fixed or contingent.
4 32 g. The time limitations imposed by the client or
4 33 the circumstances of the case.
4 34 h. The amount of money involved in the case and
4 35 the results obtained.
4 36 i. The experience, reputation, and ability of the
4 37 attorney.
4 38 j. The undesirability of the case.
4 39 k. The nature and length of the professional
4 40 relationship between the attorney and the client.
4 41 1. Damage awards in similar cases.
4 42 3. In order to recover damages, a claim under this
4 43 section shall be proved by a preponderance of the
4 44 evidence.

4 45 4. If the finder of fact finds by a preponderance
4 46 of clear, convincing, and satisfactory evidence that a
4 47 prohibited practice or act in violation of this
4 48 chapter constitutes willful and wanton disregard for
4 49 the rights or safety of another, in addition to an
4 50 award of actual damages, statutory damages up to three
5 1 times the amount of actual damages may be awarded to a
5 2 prevailing consumer.

5 3 5. An action pursuant to this chapter must be
5 4 brought within two years of the occurrence of the last
5 5 event giving rise to the cause of action under this
5 6 chapter or within two years of the discovery of the
5 7 violation of this chapter by the person bringing the
5 8 action, whichever is later.

5 9 6. This section shall not affect a consumer's
5 10 right to seek relief under any other theory of law.

5 11 Sec. 6. NEW SECTION. 714H.6 ATTORNEY GENERAL
5 12 NOTIFICATION.

5 13 1. A party filing a petition, counterclaim,
5 14 cross-petition, or pleading in intervention alleging a
5 15 violation under this chapter, within seven days
5 16 following the date of filing such pleading, shall
5 17 provide a copy to the attorney general and, within
5 18 seven days following entry of any final judgment in
5 19 the action, shall provide a copy of the judgment to
5 20 the attorney general. This subsection shall not apply
5 21 to small claims actions, except as provided in
5 22 subsection 2.

5 23 2. A party appealing to district court a small
5 24 claims order or judgment involving an issue raised
5 25 under this chapter, within seven days of providing
5 26 notice of the appeal, shall notify the attorney
5 27 general in writing and provide a copy of the pleading
5 28 raising the issue and a copy of the small claims court
5 29 order or judgment.

5 30 3. A party appealing an order or judgment
5 31 involving an issue raised under this chapter, within
5 32 seven days following the date such notice of appeal is
5 33 filed with the court, shall notify the attorney
5 34 general in writing and provide a copy of the pleading
5 35 raising the issue and a copy of the court order or
5 36 judgment being appealed.

5 37 4. Upon timely application to the court in which
5 38 an action involving an issue raised under this chapter
5 39 is pending, the attorney general may intervene as a
5 40 party at any time or may be heard at any time. The
5 41 attorney general's failure to intervene shall not
5 42 preclude the attorney general from bringing a separate
5 43 enforcement action.

5 44 5. All copies of pleadings, orders, judgments, and
5 45 notices required by this section to be sent to the
5 46 attorney general shall be sent by certified mail
5 47 unless the attorney general has previously been
5 48 provided such copies of pleadings, orders, judgments,
5 49 or notices in the same action by certified mail, in
5 50 which case subsequent mailings may be made by regular
6 1 mail. Failure to provide the required mailings to the
6 2 attorney general shall not be grounds for dismissal of
6 3 an action under this chapter, but shall be grounds for
6 4 a subsequent action by the attorney general to vacate
6 5 or modify the judgment.

6 6 Sec. 7. NEW SECTION. 714H.7 CLASS ACTIONS
6 7 BARRED.

6 8 A class action lawsuit alleging violations of this
6 9 chapter shall not be available.

6 10 Sec. 8. APPLICABILITY. This Act applies to causes
6 11 of actions accruing on or after the effective date of
6 12 this Act.>

6 13 #2. Title page, line 1 by striking the word
6 14 <cause> and inserting the following: <right>.

6 15 #3. Title page, line 2, by striking the word
6 16 <providing> and inserting the following: <including>.

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6 19

6 20 STRUYK of Pottawattamie

6 21 HF 712.301 83

6 22 rh/rj/22549